International Seabed Authority ISBA/18/LTC/5

Legal and Technical Commission

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Proposed amendments to the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area

Note by the secretariat

I. Introduction

1. At its meeting in 2011, the Council of the International Seabed Authority endorsed the recommendation of the Legal and Technical Commission to amend the current Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area (Nodules Regulations), as approved by the Assembly of the International Seabed Authority on 13 July 2000, in order to bring them into line with the Regulations on Prospecting and Exploration for Polymetallic Sulphides in the Area (Sulphides Regulations), as approved by the Assembly on 7 May 2010.

2. In order to facilitate the consideration by the Commission of the proposed amendments to the Nodules Regulations, the secretariat has prepared an informal document (ISBA/18/LTC/CRP.1) showing the revisions that would be necessary to align the Nodules Regulations with the Sulphides Regulations.

II. Proposed amendments

3. The main thematic areas requiring revision are described in the following paragraphs. In addition, a number of minor technical amendments will be required, which are highlighted in document ISBA/18/LTC/CRP.1.

4. The Nodules Regulations include a number of provisions, contained mainly in footnotes, that describe how the Regulations shall be applied to registered pioneer investors, taking into account the special regime applicable to them under resolution II of the Third United Nations Conference on the Law of the Sea and the provisions of the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982. Because all the former registered pioneer investors are now contractors with the Authority, the footnotes are no longer required and it is recommended that they be deleted.

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5. The main differences between the Nodules Regulations and the Sulphides Regulations are in the sections dealing with the protection and preservation of the marine environment. Substantive revisions are therefore proposed to part II (prospecting) and part V (protection and preservation of the marine environment), as well as the corresponding provisions in annexes II and IV.

6. The prescribed fee for applications under the Nodules Regulations is $250,000. This amount was initially prescribed for the purposes of consistency with the Agreement (annex, sect. 8, para. 3), which reflected the fee payable for registration as a pioneer investor that was fixed in 1982 by resolution II. In adopting the Sulphides Regulations, the Council considered it necessary to increase the amount of the fee to $500,000 to reflect the changes in the value of money since 1982 as well as to take into account the actual costs of processing applications. In a separate report to the Council on the status of fees paid by applicants for contracts in 2011, the Secretary-General noted that the actual costs of processing exceeded $250,000 (see ISBA/18/C/3). Consequently, it is recommended that the Commission review the fee specified in regulation 19 of the Nodules Regulations to bring it into line with the Sulphides Regulations. It will be recalled that the Sulphides Regulations also make provision for a variable fee, based on the number of exploration blocks held by the contractor at any one time. In the light of the fact that the block system does not apply to polymetallic nodules, the Commission may consider it unnecessary to introduce a variable fee system in this case.

7. A further significant difference between the Nodules Regulations and the Sulphides Regulations is that the latter contains a review clause (part X, regulation 42). It is suggested that a similar clause be inserted into the Nodules Regulations.

III. Entry into force and effect of amendments on existing and new contracts

8. Any amendments to the Nodules Regulations would enter into force on a provisional basis on the date of adoption by the Council, unless the Council specifies a different date. The Regulations enter into full force on the date of their approval by the Assembly.

9. In the case of existing contracts for exploration, section 24.2 of the Standard Clauses (annex 4 to the Regulations) states that the contract may be revised by agreement between the Contractor and the Authority "to facilitate the application of any rules, regulations and procedures adopted by the Authority subsequent to the entry into force of [the] contract". This suggests that, following adoption of the amended Regulations, it would be necessary for the Secretary-General to consult with each of the existing contractors with a view to making necessary revisions to the standard terms of contracts.

10. In cases in which applications have been submitted prior to entry into force of amendments but contracts have not been drawn up, the Commission may wish to propose to the Council that, when adopting the amended Nodules Regulations, it request the Secretary-General and the applicant to consult prior to the signature of the contract with a view to incorporating any necessary revisions into the contract.

IV. Recommendation

11. The Commission is invited to review the proposed revisions to the Nodules Regulations, as shown in document ISBA/18/LTC/CRP.1, with a view to making a proposal to the Council for adoption during its eighteenth session.